No. 209.

In the Supreme Court of the United States.

OCTOBER TERM, 1920.

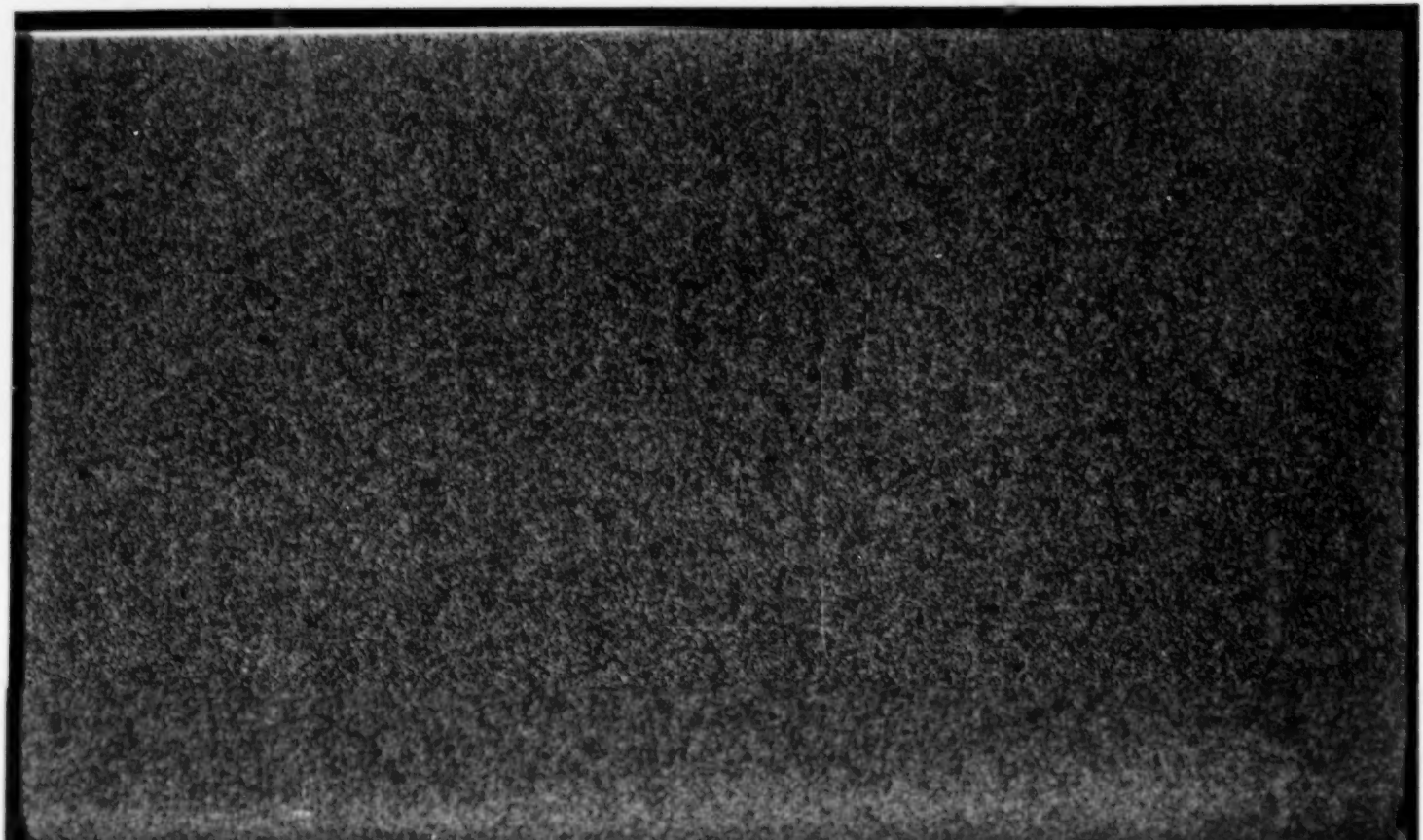
YEE WON, PETITIONER,

v.

EDWARD WHITE, AS COMMISSIONER OF IMMIGRATION, PORT OF SAN FRANCISCO, RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR THE RESPONDENT.



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BRIEF FOR THE RESPONDENT.

The writ of certiorari was granted in this case to review a judgment of the Circuit Court of Appeals affirming a judgment of the District Court declining to grant a writ of habeas corpus. (258 Fed. 792.)

The writ of habeas corpus was sought by the petitioner, a Chinese person, to have released from custody his wife and two minor children, who had been denied by the immigration authorities the right to enter this country.

THE PETITION.

The petition alleged that the petitioner "is a Chinese person and a regularly domiciled merchant residing in the United States," and his wife and minor children were, under the law, entitled to enter the

United States. It is then alleged that the wife and children are unlawfully detained by the Commissioner of Immigration and are about to be deported from San Francisco. It is alleged that the wife and children arrived at the port of San Francisco from China in July, 1917, and made application to the Commissioner of Immigration for admission to the United States, but that this application was denied by the Commissioner of Immigration upon the ground that petitioner was not a merchant, but was in fact a laundryman, and that later the Department of Labor reopened the case for the taking of further evidence, but the decision excluding the wife and children was adhered to and finally approved by the Secretary of Labor. It was also alleged that all the testimony taken and the orders and findings of the Commissioner of Immigration and the Secretary of Labor and all other papers, documents, and proceedings were incorporated in the record of the application for admission and were then in the possession and subject to the control of the Secretary of Labor, and were therefore inaccessible to petitioner, but that as soon as petitioner should be able to obtain a copy of the testimony he would ask to amend his petition and make it a part thereof. (Rec. pp. 2–7.)

An order was made requiring the respondent to show cause why the writ of habeas corpus should not issue. Later, by agreement of the parties, the immigration records referred to above were produced and filed and made a part of the original petition. (Rec.

p. 10.) A demurrer to the petition was then sustained. (Rec. p. 12.)

An appeal to the Circuit Court of Appeals having been taken, by agreement of parties the original immigration records above referred to were ordered to be withdrawn from the files of the clerk of the District Court and filed with the clerk of the United States Circuit Court of Appeals, which was done. (Rec. pp. 20–21.) The Circuit Court of Appeals, with the entire record before it, affirmed the judgment. The record brought here contains the original petition, but does not contain the immigration records, which were afterwards made a part of the petition. What was contained in these records now appears only from the statements contained in the opinion of the Circuit Court of Appeals. (Rec. p. 32.)

Whether the demurrer to the petition was properly sustained must, of course, be determined by an examination of the original petition, together with the immigration records afterwards made a part of it. Such an examination can not be made upon the present record, unless the statements in the opinion of the Circuit Court of Appeals as to what appeared from the immigration records be taken as correct.

THE FACTS.

According to the opinion of the Circuit Court of Appeals, the facts appearing in the immigration records, which were made a part of the petition, are substantially as follows:

The petitioner was first admitted into the United States as the minor son of a resident merchant in

November, 1901. His father died in San Francisco in 1908. In the latter part of the year 1910, desiring to go to China, he applied to the immigration officers at San Francisco for an identification of his status in order to enable him to return. He made no claim that he was a merchant—his claim was that he was "a capitalist and property owner." He was granted a certificate and departed for China in January, 1911, returning in May, 1914. While in China, in 1911, he married the wife involved in this case, and the two children were born in China in 1912 and 1913, respectively.

In support of the application of his wife and children to be admitted, he testified that he was "a property owner and capitalist," and also that he was engaged in exporting fruit from San Francisco to an Australian house, his firm in San Francisco, known as Tai Sang, being a branch of the Australian house. He gave his place of business and also the place where he lived as 842 Washington Street, second floor, room No. 2. There was no evidence that there was any fruit or merchandise at this place, and he testified that the packing and shipping was done elsewhere. The immigration inspector advised the commissioner that it was thought that the evidence offered was sufficient to justify the granting of the status of petitioner as an exempt person, i. e., "a property holder and capitalist," and that he had done no labor during the past year.

Pending action on this report, information was received by the commissioner to the effect that petitioner

was not a merchant but a laundryman. Some investigation was made, and petitioner was called on for further examination, in order to be confronted by the persons who had identified him as a laundryman. He failed to appear, and the commissioner decided that his exempt status had not been established, and denied admission to his wife and children. On appeal, the Secretary of Labor reopened the case for further testimony, and there was testimony, more or less conflicting, on the question as to whether he had been engaged as a laundryman. The commissioner, however, upon full consideration, decided that he was a laundryman and had been so engaged, and denied the application. This finding was approved by the Secretary of Labor.

THE LAW.

By the treaty between the United States and China, concluded in November, 1880 (22 Stat. 826), it was provided, in Article I, that—

> Whenever in the opinion of the Government of the United States, the coming of Chinese laborers to the United States, or their residence therein, affects or threatens to affect the interests of that country, or to endanger the good order of the said country or of any locality within the territory thereof, the Government of China agrees that the Government of the United States may regulate, limit, or suspend such coming or residence, but may not absolutely prohibit it. The limitation or suspension shall be reasonable and shall apply only to Chinese who may go to the United States as laborers, other classes not

> being included in the limitations. Legislation taken in regard to Chinese laborers will be of such a character only as is necessary to enforce the regulation, limitation, or suspension of immigration, and immigrants shall not be subject to personal maltreatment or abuse.

And by Article II it was provided:

> Chinese subjects, whether proceeding to the United States as teachers, students, merchants, or from curiosity, together with their body and household servants, and Chinese laborers who are now in the United States shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities, and exemptions which are accorded to the citizens and subjects of the most favored nation.

Pursuant to this treaty, the act of May 6, 1882 (22 Stat. c. 126, p. 58), was passed, suspending for ten years the coming of Chinese laborers to the United States. By subsequent acts of Congress this suspension has been in force ever since.

By the treaty of March 17, 1894 (28 Stat. 1210), it was agreed that for a period of ten years the coming of "Chinese laborers to the United States shall be absolutely prohibited," except that this shall not apply—

> to the return to the United States of any registered Chinese laborer who has a lawful wife, child, or parent in the United States, or property therein of the value of one thousand dollars, or debts of like amount due him and pending settlement.

The treaty then regulated the manner in which laborers within this excepted class should be allowed to depart from and return to this country. This treaty was to remain in force for a period of ten years, and also for a further period of ten years unless within six months before the expiration of the first period of ten years either Government should formally give notice to the other of its final termination.

The act of November 3, 1893 (28 Stat. c. 14, p. 8), defined the terms "laborer" and "merchant" as follows:

> The words "laborer" or "laborers," wherever used in this act, or in the act to which this is an amendment, shall be construed to mean both skilled and unskilled manual laborers, including Chinese employed in mining, fishing, huckstering, peddling, laundrymen, or those engaged in taking, drying, or otherwise preserving shell or other fish for home consumption or exportation.
>
> The term "merchant," as employed herein and in the acts of which this is amendatory, shall have the following meaning and none other: A merchant is a person engaged in buying and selling merchandise, at a fixed place of business, which business is conducted in his name, and who during the time he claims to be engaged as a merchant does not engage in the performance of any manual labor, except such as is necessary in the conduct of his business as such merchant.

In section 1 of the act of August 18, 1894 (28 Stat. c. 301, pp. 372, 390), it was provided:

> In every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of the appropriate immigration or customs officers, if adverse to the admission of such alien, shall be final, unless reversed on appeal to the Secretary of the Treasury.

By the act of March 4, 1913 (37 Stat. c. 141, p. 736), the Bureau of Immigration and the Immigration Service were transferred to the Department of Labor, and an appeal from the decision of the immigration officers excluding an alien from admission into the United States was to the Secretary of Labor instead of to the Secretary of the Treasury.

QUESTION INVOLVED.

There is no claim that the wife and children in this case are entitled to be admitted in their own right. If admitted at all, they must be admitted in the right and upon the status of the petitioner himself. His right was predicated upon the claim that he was a merchant. This claim has been decided against him by the tribunal whose judgment Congress has declared shall be final. Manifestly, the petitioner must succeed, if at all, upon the ground that, as a laundryman, which is included in the definition of "laborer," he is entitled to bring into the country his wife and children because he himself is entitled to remain here. In the opinion of the

Circuit Court of Appeals it is said that in that court the present petitioner, through his counsel, said:

> It will thus be seen that the sole question is whether or not a Chinese person entitled to remain in this country by virtue of our treaty with China, although held by the immigration officials to have lost his status as a merchant, is entitled to have his wife and minor children admitted. (Rec. p. 36.)

This, however, is not quite an accurate statement. It was not decided that petitioner had *lost* his status as a merchant. It did not appear that he ever had such a status. The finding was that he was engaged as a laundryman, and was therefore a laborer. The question then is: Is a Chinese laborer, who, for any reason, is entitled to remain in this country, entitled to bring in his wife and minor children?

BRIEF.

I.

The Coming Into this Country of Chinese Laborers Is Absolutely Prohibited.

All the legislation of Congress on this subject has been directed to the exclusion from this country of Chinese laborers. The prohibition against such laborers coming into the country is absolute, with two exceptions. Such laborers in this country at the time the treaty of 1880 was entered into are permitted to leave the country and return, and indeed, are put in the same class with merchants. Under the treaty of 1894 Chinese laborers departing temporarily from this country may return if they

have living here certain relatives or own here a certain amount of property. With this exception, there is no way in which a Chinese laborer can lawfully enter this country.

II.

Chinese Persons Other than Laborers May Be Admitted Provided They Comply with Statutory Regulations.

Chinese persons, other than laborers, are not prohibited from coming to this country. The statutory regulations so far as they relate to merchants and persons other than laborers are intended to secure the Government against imposition by laborers coming in under the guise of members of the excepted class.

III.

The Petitioner, Upon this Record, Has No Status Except That of a Laborer.

The finding of the immigration authorities, approved by the Secretary of Labor, is determinative of the claim of petitioner that he is a merchant and establishes conclusively the fact that he is a laborer. He is not a laborer who was in this country when the treaty of 1880 was entered into, for he came here first in 1901. It does not appear even that he is the son of a Chinese laborer who was in this country prior to 1880. He did not enter in 1901 in his own right or upon his own status, but upon the status of his father, who was a merchant. So far as it appears, he himself has never had a status as a merchant. As a minor, he was permitted to enter upon his father's status. It does not appear that he has claimed ever to have been himself engaged in the mercantile busi-

ness, except that, in support of the right of his wife and children to enter, he claimed to have been engaged in mercantile pursuits in 1915, 1916, and 1917, after his return to this country in 1914. Even if it be assumed that he was, as he claimed, interested in a mercantile business during these years, that fact can avail him nothing, since it is established that during those years he was actively engaged as a laundryman, and therefore brought himself within the statutory definition of a laborer. When he departed for China in 1910, he made no claim that he was a merchant. His claim then was merely that he was a capitalist and property owner. Upon this statement, he was given a certificate entitling him to return, presumably on the ground that this brought him, even if a laborer, within the exception of the treaty of 1894. It can scarcely be claimed that one is entitled to the status of a merchant merely because, as a child, he was allowed to enter the country because his father was a merchant. The father's status would not control the status of the son except during minority. Upon reaching his majority, the status of such a son would depend, of course, upon his own occupation. If thereafter he was occupied as a laborer, he would, having been lawfully brought into the country, be entitled to remain, but his status would be that of a laborer. It is obvious, therefore, that the most that can be claimed in this case is that having been brought to this country in his infancy by his father, who was a merchant, he is entitled to remain, and that, having prior to 1910 acquired property to the extent men-

tioned in the treaty of 1894, he was entitled to go to China and return, although he was, in fact, a laborer within the meaning of the Act of Congress. The question, therefore, is whether a wife and children, who are entitled to enter, if at all, only by virtue of his status, can be admitted when he has only the status of a laborer.

IV.

The Right of a Merchant to Bring to this Country his Chinese Wife and Children Results from the Fact that, Owing to his Status as Merchant, such Wife and Children Can Not Be Said to Be within the Prohibited Class of Laborers.

The case of the petitioner seems to rest entirely upon the proposition that because he is himself entitled to remain in this country he is entitled to bring in his wife and children. In other words, the claim is that, being entitled to remain here, he is entitled to all the privileges which belong to merchants and others of the classes to which the exclusion treaties and laws do not apply. It is true this court has held that a Chinese merchant domiciled in this country may lawfully bring in his wife and minor children, but an examination of the case of *United States* v. *Mrs. Gue Lim*, 176 U. S. 459, will show that the ground upon which that conclusion was reached necessarily leads to the rejection of this claim. In that case, speaking of the legislation on this subject, it was said: "It is the coming of Chinese laborers that the act is aimed against." (Id. p. 467.) It was then shown that the woman and minor children in question were not coming to this country as laborers, but as members of the family of a merchant.

It was held that a fair interpretation of the treaties and statutes on the subject led to the conclusion that it was never intended to prevent Chinese merchants domiciled in the United States from bringing in their wives and minor children. This was because the only positive prohibition of the law was against the coming in of laborers; and since these women and children were not coming as laborers, it was no violation of the law to admit them. They came as members of the family of a merchant, and, as such, would have a status other than that of laborers. The treaty and statutes expressly permitted the merchant to bring in body and household servants. If such a merchant, however, had claimed the right to bring in farm laborers to work for him, there would have been no difficulty in concluding that he could not do this, for the reason that he would then be bringing in laborers in direct violation of the law.

In this case the woman and children involved, if admitted, will come in as members of the family of a laborer and will partake of his status. That his status is that of a laborer is conclusively settled by the finding of the immigration authorities, approved by the Secretary of Labor. *Lee Lung* v. *Patterson*, 186 U. S. 168. To accord, therefore, to a laborer in this country the same right which is accorded to merchants and others in the excepted classes would be to permit a direct violation of the positive prohibition of the law. When admitted, they would have the status of the petitioner, and their admission would therefore be the admission of laborers within

the meaning of the act of Congress. The only exception to the prohibition against the coming in of Chinese laborers is those who come as the body or household servants of merchants or others in the excepted class. The admission of the wives and minor children of merchants is not an exception to the rule. Such persons, when admitted, do not have the status of laborers, but partake of the status of a merchant. To admit them in the case of a laborer, however, would be to introduce another exception, which the statute does not make. This is true because, when admitted, they will partake of the status of the laborers in whose right they claim admission

If for a year preceding his return to the United States the petitioner had himself been engaged in China as a laborer, as he was engaged in this country, he would not have been entitled to return except for such right as accrued to him by his previous residence and acquisition of property in this country. As a laundryman, he would, if he had not been previously admitted here, have been denied admission. The purpose of all legislation on this subject has been to exclude Chinese laborers. The petitioner is permitted to remain here, not because of but in spite of the fact that he is a laborer. He entered during his infancy lawfully on the status of his father. It is not claimed, of course, that his right to remain here depended upon his becoming a merchant after he attained his majority. Having rightfully entered, he was entitled to remain, although from choice or from necessity he may thereafter have become a

laborer. If he had become a merchant, he could, as his father did, have brought in a wife and children without running counter to the act of Congress prohibiting the coming in of laborers, because he could then have given his wife and minor children a status which would have entitled them to enter. It is one thing to say that a Chinese laborer found lawfully in this country may be permitted to remain and quite another to say that such a laborer may go back to China, marry a wife there, and, after the birth of two or three children, bring them all back and give them, in this country, his status as laborers. In the first case, the persons coming in are not embraced in the class of laborers, and hence neither the letter nor the spirit of the law is violated. In the latter, the persons coming in, having no status of their own, must take the status of the husband and father, and if he is a laborer, both the letter and the spirit of the law was violated.

CONCLUSION.

It is respectfully submitted that no warrant can be found for permitting a Chinese person domiciled in this country and having the status of a laborer to bring in his wife and minor children and that the judgment of the courts below denying the writ of habeas corpus should be affirmed.

WILLIAM L. FRIERSON,
Solicitor General.

FEBRUARY, 1921.

arrival at San Francisco from China, were being held for return. 258 Fed. Rep. 792. He must be regarded here as a Chinese person first permitted to enter the United States in 1901 as a resident merchant's minor son, but who subsequently acquired the status of laborer and as such entitled to remain.

In respect to the parties specially concerned the Circuit Court of Appeals said: "The father of Yee Won died in San Francisco in 1908. In the latter part of 1910 Yee Won applied to the immigration officers at the port of San Francisco for an identification of his status. He was about to depart for China, and it was his purpose to secure such an identification as would secure his admission upon his return. He made no claim that he was a merchant. His claim was that he was 'a capitalist and property owner.' He was granted such a certificate and departed for China in January, 1911. He returned on May 29, 1914. He was then 33 years of age. He claims to have married Chin Shee in China, March 2, 1911, and that a daughter, Yee Tuk Oy, was born to them November 28, 1912, and a son, Yee Yuk Hing, was born to them on November 2, 1913. These three are the present applicants to enter the United States. They were all born in China, and this is their first application to enter the United States."

The writ was properly denied unless as matter of law such a laborer may properly demand that his wife and minor children be permitted to come into this country and reside with him notwithstanding they were born in China and have never resided elsewhere. In support of such right *United States* v. *Mrs. Gue Lim*, 176 U. S. 459, is cited, and it is said that the reasoning therein which permitted her to enter because a merchant's wife applies to the family of a Chinese laborer, who lawfully resides here. But that case turned upon the true meaning of § 6, Act of July 5, 1884, c. 220, 23 Stat. 115, which required

every Chinese person other than laborers as condition of admission to present a specified certificate. The conclusion was that the section should not be construed to exclude their wives, since this would obstruct the plain purpose of the Treaty of 1880 to permit merchants freely to come and go.

The Treaty of 1894, 28 Stat. 1210, provided that "the coming, except under the conditions hereinafter specified, of Chinese laborers to the United States shall be absolutely prohibited," but this "shall not apply to the return to the United States of any registered Chinese laborer who has a lawful wife, child, or parent in the United States, or property therein of the value of one thousand dollars, or debts of like amount due him and pending settlement." Exclusion of all Chinese laborers, with certain definite, carefully guarded exceptions, was the manifest end in view, and for a long time the same design has characterized legislation by Congress. "In the opinion of the Government of the United States the coming of Chinese laborers to this country endangers the good order of certain localities within the territory thereof." See Act of May 6, 1882, c. 126, 22 Stat. 58; Act of July 5, 1884, c. 220, 23 Stat. 115; Act of September 13, 1888, c. 1015, 25 Stat. 476, 477; Act of May 5, 1892, c. 60, 27 Stat. 25; Act of November 3, 1893, c. 14, 28 Stat. 7.

The special object of the Treaty of 1894 was to secure assent of China to the limitation or suspension by the United States of immigration or residence of Chinese laborers. Prior to that time rather drastic legislation had undertaken to limit such immigration and residence. These statutes were "reënacted, extended, and continued, without modification, limitation, or condition" by Act of April 29, 1902, c. 641, 32 Stat. 176, as amended by Act of April 27, 1904, c. 1630, § 5, 33 Stat. 428, and are now in force notwithstanding the Treaty of 1894 expired in 1904. *Hong Wing* v. *United States*, 142 Fed. Rep. 128. This